



Bills Digest

No. 87 2001–02

Protection of the Sea (Prevention of Pollution from  
Ships) Amendment Bill 2002

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No. 87 2001–02

Protection of the Sea (Prevention of Pollution from Ships)  
Amendment Bill 2002

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11 March 2002

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# Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 2002

**Date Introduced:** 20 February 2002

**House:** House of Representatives

**Portfolio:** Transport and Regional Services

**Commencement:** The key operational aspects of the Act commence the day after the Act receives Royal Assent.

## Purpose

To correct drafting errors in Schedule 3 of the *International Maritime Conventions Legislation Amendment Act 2001*. The effect of these errors was that, from 1 October 2001, a number of the offence provisions in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* relating to oil, noxious liquid substances and garbage no longer applied in the area from the outer edge of Australia's 12 nautical mile Territorial Sea to the limit of the 200 nautical mile Exclusive Economic Zone.

## Background

The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the 1983 Act) implements Australia's obligations under the International Convention for the Prevention of Pollution from Ships, known as MARPOL 73/78. Annexes I-VI of MARPOL 73/78 place controls on operational discharges at sea and prescribe construction and equipment standards. Australia has ratified Annexes I, II, III and V. More information on MARPOL 73/78 can be obtained at <http://www.amsa.gov.au/me/pn324.htm#marpol>.

Domestic implementation of MARPOL 73/78 is a cooperative matter between the Commonwealth and the States and Territories. This is reflected in the 1983 Act which generally provides that many of the Act's offence provisions only apply in the 'sea near a State [or Territory]' if the relevant State or Territory has not passed complementary MARPOL 73/78 implementation legislation. For the purpose of the 1983 Act, 'sea near a State' means the waters out to the limits of Australia's Territorial Sea, which is 12 nautical miles from coastal baselines. Until the commencement of Schedule 3 of the *International*

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*Maritime Conventions Legislation Amendment Act 2001* on 1 October 2001, the 1983 Act's offence provisions applied out from the 12 nautical miles Territorial Sea to the edge of Australia's 200 nautical mile Exclusive Economic Zone (EEZ).<sup>1</sup>

Amongst other matters, Schedule 3 of the *International Maritime Conventions Legislation Amendment Act 2001* amended existing offence provisions relating to oil, noxious substances, garbage etc by creating a new offence of strict liability applying to both the master of the ship and the ship owner. Unfortunately, the amendments were incorrectly drafted so that neither the strict liability nor the fault offence<sup>2</sup> applied to the EEZ.<sup>3</sup> The effective result was that, any time after 1 October, a ship discharging a pollutant in the EEZ contrary to MARPOL 73/78 could not be prosecuted under Australian law.

In December 2001, waste oil was washed up on Phillip Island in Victoria. It is probable that this oil was discharged contrary to Annex I of MARPOL 73/78. Cooperative investigations by Victorian and Commonwealth agencies have yet to establish both the ship responsible for the discharge and whether it took place inside or outside of the 12 nautical mile Territorial Sea. If it was outside, no offence would have taken place because of the drafting error in Schedule 3 of the *International Maritime Conventions Legislation Amendment Act 2001*.

## Main Provisions

Schedule 1 - Amendment of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983

**Items 1-10** correct the drafting errors contained in Schedule 3 of the *International Maritime Conventions Legislation Amendment Act 2001* by providing that both the strict liability and fault pollution offences contained in that Act apply to the EEZ. **Items 1** and **2** relate to MARPOL Annexe I, **items 3** and **4** to Annexe II etc.

## Concluding Comments

The Bill seeks to restore the clear policy intent of Schedule 3 of the *International Maritime Conventions Legislation Amendment Act 2001*. It is suggested there is no reason why at least items 1, 3, 5, 7 and 9 of the Bill (which deal with fault offences) should not be amended to make their entry into force retrospective<sup>4</sup> to 1 October 2001. This would prevent any person responsible for reckless or negligent discharges<sup>5</sup> within the EEZ post-1 October 2001 from escaping prosecution.

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## Endnotes

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- 1 Beyond the EEZ, the offence provisions only apply to Australian ships.
- 2 In general a fault offence occurs where the discharge was caused by reckless or negligent behaviour.
- 3 The penalties attaching to the offences are up to \$55,000 (or \$275,000 for a company) for a strict liability offence and \$220,000 (or \$1.1 million for a company) for the fault offence. There are no gaol terms.
- 4 The Senate Scrutiny of Bills Committee has stated it will not 'comment adversely' in relation to the retrospectivity of legislation if 'it does no more than...correct a drafting error'. For more on the issue, see *Work of the Committee during the 38<sup>th</sup> Parliament*, paragraph 2.5 <http://www.aph.gov.au/senate/committee/scrutiny/work38/CHAPTER2.HTM>
- 5 That is, discharges within the meaning of the 1983 Act.

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